

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

Civil Action No. 05-30111-MAP

James V. Cariddi,)
Plaintiff)
v.)
Consolidated Aluminum Corporation,)

JOINT STATEMENT FOR INITIAL SCHEDULING CONFERENCE

Pursuant to the Court's July 14, 2005 Order on the parties' Joint Motion to Convene Scheduling Conference on July 28, 2005, and in accordance with Fed. R. Civ. P. 16(b) and Local Rule 16.1, counsel for the plaintiff, James V. Cariddi, and counsel for defendant, Consolidated Aluminum Corporation, have conferred and submit the following:

A. PROPOSED AGENDA OF MATTERS TO BE DISCUSSED AT SCHEDULING CONFERENCE

- 1) Establishment of a pretrial schedule, including phasing of litigation to provide for limited initial discovery, cross-motions for summary judgment on the petroleum exclusion under CERCLA and/or M.G.L. c. 21E and liability issues under M.G.L. c. 21E and holding in abeyance joinder of additional parties, discovery and other proceedings on calculation and allocation of response costs until a later case management conference;
- 2) Settlement prospects; and
- 3) Suitability of case for ADR at different phases of litigation.

Attached as Exhibit A is an Agreement, executed by counsel for the parties prior to commencement of this litigation, memorializing the parties' acknowledgement that calculating and allocating response costs cannot be addressed under the procedures provided for in M.G.L. c.21E, §4A, in the absence of resort to a judicial forum to resolve the more fundamental liability issue raised by defendant's interpretation of M.G.L. c. 21E, §5(a).

B. PROPOSED INITIAL PHASE OF PRE-TRIAL SCHEDULE

	<u>Event</u>	<u>Deadline</u>
1)	Serve automatic discovery disclosure pursuant to L.R. 26.2(A)	August 31, 2005
2)	File motions to amend pleadings	August 31, 2005
3)	Discovery – limited to the issues of oil/petroleum and hazardous substances/materials under CERCLA and/or G.L. c. 21E and “causation” under G.L. c. 21E, § 5(a)(5)	
a)	Written discovery (interrogatories, and request for production of documents)	September 15, 2005
b)	Non-expert depositions shall be completed	October 28, 2005
c)	Parties’ expert witnesses shall be designated	November 4, 2005
d)	Plaintiff’s Rule 26(a)(2) disclosures	November 18, 2005
e)	Defendant’s Rule 26(a)(2) disclosures	December 2, 2005
f)	All expert witness depositions shall be completed	December 30, 2005
4)	Defendant to file and serve motion for Summary judgment on liability	January 20, 2006
5)	Plaintiff to file and serve cross-motion for summary judgment on liability	February 10, 2006
6)	Hearing and ruling on summary judgment	Court to schedule
7)	Further Scheduling/Status Conference	30 days after Court’s ruling on summary judgment motions

Counsel for the parties submit that the question of consent to trial by magistrate judge may be deferred until the Further Scheduling/Status Conference.

C. CERTIFICATION OF CONFERENCE REGARDING BUDGET AND ALTERNATIVE DISPUTE RESOLUTION

The parties will separately file their certifications, pursuant to Local Rule 16.1(D)(3), at or before the initial scheduling conference on July 28, 2005.

Plaintiff,
James V. Cariddi
By his attorneys:

/s/ Christopher B. Myhrum
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Defendant,
Consolidated Aluminum Corporation
By its attorneys:

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Dated: July 20, 2005

AGREEMENT

This Agreement is entered on this 28th day of April, 2005 between James V. Cariddi and Consolidated Aluminum Corporation.

WHEREAS, James V. Cariddi ("Cariddi") owns property located at 506 State Road, North Adams, Massachusetts (the "Property");

WHEREAS, the Property is a location of a release of oil and/or hazardous materials requiring response actions, as those terms are defined by G.L. c. 21E;

WHEREAS, pursuant to G.L. c. 21E, § 4A Cariddi issued notice letters dated May 13, 2002 and February 5, 2004 to Consolidated Aluminum Corporation ("Conalco") alleging that Conalco is liable as a person who "otherwise caused" a release of oil at the Property pursuant to G.L. c. 21E, § 5(a)(5) and demanding reimbursement of past and payment of future response action costs;

WHEREAS, following Conalco's receipt of the February 5, 2004 notice, Cariddi provided Conalco with various documents and information regarding the response actions and Conalco gathered information regarding Cariddi's claims, including the deposition testimony of Norman R. Lappies, a former employee of Conalco, concerning the presence of oil in the basement of the Property;

WHEREAS, by letter dated October 29, 2004 Conalco responded to Cariddi's notice and, among other things, set forth its position that the legal standard for establishing liability of a prior owner, such as Conalco, as a person who "otherwise caused" a release of oil under G.L. c. 21E, §5(a)(5) requires the demonstration of a duty and breach or unreasonable conduct in order to give rise to liability;

WHEREAS, Cariddi disputes Conalco's position with respect to the legal standard for imposing liability under G.L. c. 21E, § 5(a)(5);

WHEREAS, Conalco and Cariddi agree that their dispute as to the legal standard under Section 5(a)(5) can be resolved by judicial decision;

WHEREAS, G.L. c. 21E, § 4A(b) directs that Cariddi and Conalco "shall confer in good faith and in an effort to resolve all disputes that may exist between them" with respect to performance of or paying for response actions and liability;

WHEREAS, Conalco and Cariddi agree that their dispute as to the legal standard under G.L. c. 21E, § 5(a)(5) presents a threshold issue for resolution and therefore have not sought to resolve other disputes that exist between them, such as, for example, allocation, contribution or equitable shares of response action costs to be borne by the parties or others or the divisibility of response actions;

WHEREAS, Cariddi and Conalco, through their attorneys, enter into this Agreement to memorialize their positions and their agreement to seek resolution of the legal standard under G.L. c. 21E, § 5(a)(5) in a cost efficient and expeditious manner;

NOW, THEREFORE, Cariddi and Conalco agree as follows:


1. Conalco agrees that its undersigned attorney is authorized to accept service of process.
2. Conalco and Cariddi agree to expeditiously resolve through motion practice in any court in which Cariddi's action is pending the disputed issue between them with respect to the legal standard for establishing liability of a prior owner as a person who "otherwise caused" a release of oil under G.L. c. 21E, § 5(a)(5) as applied to the facts in this matter.

3. Except as to the issue identified in paragraph 2 above, Cariddi and Conalco agree to reserve unresolved issues, including, among others, the allocation, contribution or equitable shares of response action costs to be borne by the parties or others not a party to this Agreement and the divisibility of response actions for discussion pursuant to G.L. c. 21E, § 4A(b).

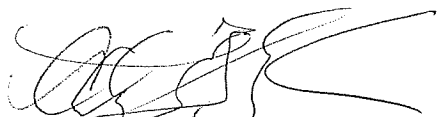
4. Conalco and Cariddi agree to bring this Agreement to the attention of the court for the purpose of scheduling or issuing appropriate orders, and to otherwise take steps to assure that the disputed issue between the parties is expeditiously resolved.

The undersigned are duly authorized by Cariddi and Conalco, respectively, to execute this document.

CONSOLIDATED ALUMINUM
CORPORATION
By its attorneys,


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